(37,433)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 736

IVAN E. OAKES, PETITIONER,

vs.

BEN LAKE, AS SHERIFF OF OWYHEE COUNTY, IDAHO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 15, 1933

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IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
DISTRICT OF IDAHO

IVAN E. OAKES, as Receiver,

Plaintiff,

vs.

BEN LAKE, as Sheriff of Owyhee
County, Idaho,

Defendant.

No. 1633

AMENDED COMPLAINT

Filed November 20, 1931

Comes now the above named plaintiff and after leave of court had and obtained, for his cause of action against the defendant, alleges and shows to the Court:

I.

That the plaintiff is a resident and inhabitant of the State of Oregon, and is the duly appointed, qualified

and acting receiver of all of the property hereinafter mentioned and was so appointed as receiver by an order of the Circuit Court of the State of Oregon for Malheur County on the 17th day of March, 1931, as more fully appear from a copy of the said order of appointment attached to this complaint, hereby referred to and by this reference made a part of this complaint.

II.

That after such appointment, the plaintiff herein qualified by subscribing an oath of office and filing his bond in the amount of $10,000, which bond was thereupon approved by the Court and thereupon this plaintiff took into his possession all of the property hereinafter described.

III.

That the defendant is the duly elected, qualified and acting sheriff of Owyhee County, Idaho, and is a resident and inhabitant of said county and state.

IV.

That the amount in controversy in this action exceeds the sum of $3000. exclusive of costs and disbursements, as more particularly appears hereinafter.

V.

That heretofore and at all of the times hereinafter mentioned, one W. S. Skinner was the owner of certain personal property, among other, to-wit: approxi-

mately 45 head of cows of mixed ages, 29 head of two-year old steers, 22 head of one-year old steers, 27 head of one-year old heifers, 16 head of calves, and 2 bulls, all branded SS on the left hip. That all of said personal property had theretofore been mortgaged to the Equitable Trust Company as trustee, said Equitable Trust Company being a corporation organized under the laws of the state of Oregon, doing a trust business in the city of Portland, Multnomah County, Oregon.

VI.

That thereafter the said W. S. Skinner made default in the payment of the sums due under said trust deed and mortgage, and thereupon the said trustee declared a default in the terms of said trust deed and commenced a suit in the Circuit Court of Malheur County, Oregon, for the foreclosure thereof, and in said suit the plaintiff herein was appointed and did qualify as the receiver, as aforesaid, and that upon the said 17th day of March, 1931, or immediately thereafter and prior to the 20th day of March, 1931, this plaintiff, as receiver, took into his possession, among other things, all of the aforesaid and above described personal property.

VII.

That the said receiver is now and at all times herein mentioned has been entitled to the immediate and exclusive possession of said personal property above described.

VIII.

That on or about the first day of July, 1931, the above-named defendant took possession of said personal property, particularly described, in Owyhee County, Idaho, by virtue of an attachment in a suit wherein one David Sommerville was plaintiff and one W. S. Skinner was defendant. That said defendant now holds said cattle by virtue of such attachment.

IX.

That this plaintiff has heretofore and prior to the comment of this action caused a demand to be made upon the said defendant for the return of said cattle to the plaintiff, but that the defendant refused and still refuses to return said cattle in accordance with said demand, or otherwise.

X.

That said personal property is of the reasonable value of $5000.00.

WHEREFORE, plaintiff prays for a judgment of this court decreeing and finding that the plaintiff is the owner of and entitled to the immediate possession of said personal property, and in lieu thereof, that the plaintiff have judgment against the defendant for the sum of $5000.00, together with his costs and disbursements as herein expended.

P. J. GALLAGHER,

Attorney for Plaintiff.

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR

EQUITABLE TRUST COMPANY, formerly LUMBERMENS TRUST COMPANY, of Portland, Oregon, a corporation,

Plaintiff,

vs.

W. S. SKINNER and ELLA SKINNER, husband and wife; WILLIS G. THOMPSON; and LUMBERMENS SECURITIES CORPORATION, a corporation,

Defendants,

No.

ORDER APPOINTING RECEIVER

Now on this 17th day of March, 1931, this cause came on for hearing upon the bill of complaint and upon the application of plaintiff for the appointment of a receiver, and the Court having listened to the statement of counsel, and being fully advised in the premises, and the Court finding that it has jurisdiction; and further

it appearing to the Court that it is provided in the mortgage or trust deed, to foreclose which the bill of complaint in this cause was filed, that upon the finding of a foreclosure suit the plaintiffs in such suit should be entitled as of right, without notice, to the appointment of a receiver of the mortgaged property, and that said defendants, W. S. Skinner and Ella Skinner did thereby irrevocably consent to such appointment; and it further appearing to the Court that the property of said defendants, W. S. Skinner and Ella Skinner referred to in the bill of complaint herein and covered by the mortgage or deed of trust therein mentioned sought to be foreclosed, is inadequate security for the payment of the bonds secured by said mortgage or deed of trust, and is inadequate security for the protection of the holders of the bonds issued under said mortgage or deed of trust and now outstanding, and that it is necessary and essential to the protection of the plaintiff and of the holders of the bonds outstanding under said mortgage or deed of trust that a receiver be appointed to take charge and possession of all the property of the defendants, W. S. Skinner and Ella Skinner covered thereby, and to manage, control, operate, conserve, and maintain said property: and it further appearing to the Court that it is to the best interest of said bondholders that said receiver be authorized to continue the business of said defendants, W. S. Skinner and Ella Skinner;

IT IS THEREFORE ORDERED, AD-

JUDGED AND DECREED:

1. That the motion for the appointment of a receiver and the prayer of the bill of complaint for the appointment of a receiver be and the same are hereby granted, and that Ivan E. Oakes be and he is hereby appointed receiver of all and singular the assets, lands, tenements and hereditaments of the defendants, W. S. Skinner and Ella Skinner covered by said mortgage or deed of trust, and all their property, real, personal and mixed, of every kind and nature covered by said deed of trust.

2. That the receiver shall, before entering upon his duties hereunder, give and file with the Court a bond in the penal sum of Ten Thousand ($10,000) Dollars, with surety or sureties approved by this Court and conditioned that he will faithfully perform his duties as receiver herein, and will well and truly account for any and all moneys or properties coming into his hands as such receiver, and abide and perform all things which he is herein or may hereafter be directed to perform in this cause.

3. That upon the filing and approval of said bond and the execution of an oath according to law, said receiver be and he is hereby authorized, empowered, and directed to take immediate possession of all and singular the property, both real and personal described in or subject to the said mortgage or deed of trust, all of which is to be done until the further order of this Court.

The receiver shall exercise all such powers as are usually exercised by receivers, and all such as are necessary or convenient to the proper conduct by him of the business of the defendants, W. S. Skinner and Ella Skinner, and he shall discharge all such duties as are within the line, scope, or purpose of his appointment.

4. That the said defendants, W. S. Skinner and all their agents, employees, and other persons claiming under them, are now hereby ordered, commanded, and directed to turn over and to deliver to such receiver the possession of all of the property, both real and personal, now in their hands or under their control, or which may hereafter come into their hands, control, or possession.

That the said defendants, W. S. Skinner and Ella Skinner and all their agents, employees, and other persons claiming under them, be, and they are now hereby, restrained and enjoined during the pendency of this cause and the administration of said receiver, from transferring, selling, disposing of, or in any wise interfering with any of the property, either real or personal, subject to the terms of said mortgage or trust deed; and from disturbing, preventing, or in any wise interfering with the receiver in his possession, control, operation, and management of the property, or any part thereof, over which the said receiver is appointed as such, and from disturbing, preventing, or in any way interfering with the receiver in the discharge of his duties hereunder.

5. The receiver, in operating, conducting, and man-

aging the business of the defendants, W. S. Skinner and Ella Skinner, is, until the further order of this Court, hereby authorized and empowered:

(a) To manage and operate the said property and business of the defendants where the same is a going concern in such manner as will, in his judgment, produce the most satisfactory results;

(b) To employ and discharge, and fix the compensation of all such employees as are in the judgment of the receiver deemed necessary to aid in the discharge of his duties herein authorized;

(c) To institute and prosecute such suits as may be necessary in the judgment of the receiver to protect the property and trusts thereby vested in him, and to likewise defend all such actions as may be instituted against him as such receiver, and also to assume and take the prosecution or defense of any and all suits now pending against or by the defendants, W. S. Skinner and Ella Skinner, the prosecution or defense of which will, in the judgment of said receiver, be necessary for the proper protection of the property placed in his charge; but all attorney fees therein incurred are to be subject to the approval of this Court;

(d) To keep the property of the defendants hereby placed in his possession and control in-

sured in the same manner and to the same extent as it was insured by the defendants themselves, or as, in the judgment of the receiver, may seem fit and proper;

(e) To preserve the trust property in good order and condition, making all needed repairs thereon;

6. That the receiver acquaint himself at once with the extent and condition of the property coming under his control, and within thirty days hereafter make and file with this Court a full and comprehensive inventory showing the property in his hands.

7. That a person selected by the receiver be and is hereby appointed the attorney and counsel for the receiver at such fees as may be hereafter allowed him by the Court.

8. That the said receiver shall, at quarterly periods hereafter, until the further order of this Court, file itemized reports showing his receipts and disbursements.

DATED at Vale, Oregon, the 17th day of March, 1931.

(Signed) W. W. WOOD,

Circuit Judge.

(Duly verified.)

(Title of Court and Cause.)

ANSWER

Filed Nov. 30, 1931

Comes now the above defendant and answering the amended complaint of plaintiff admits, denies and alleges as follows:

I.

The defendant has no knowledge, information or belief as to whether the plaintiff was appointed receiver and qualified as such, as alleged in Paragraphs I and II of the amended complaint and basing his denial on that ground the defendant denies the allegations of said paragraphs.

II.

The defendant denies that the plaintiff took into his possession all of the property, or that he took into his possession any of the property described in the complaint.

III.

The defendant admits the allegations of Paragraph III of the amended complaint.

IV.

The defendant denies the allegations of Paragraph IV of the amended complaint.

V.

The defendant denies the allegations of Paragraphs V, VI and VII of the amended complaint, and particularly denies that the plaintiff, as receiver or otherwise, at any time took into his possession or had in his possession any of the property described in the complaint.

VI.

The defendant denies that the plaintiff is entitled to the possession of said property.

VII.

Answering Paragraph VIII, the defendant denies the same, but admits that by virtue of a valid writ of attachment in a suit wherein one David Sommerville was plaintiff and W. S. Skinner was defendant, he took approximately one hundred head of range cattle belonging to the said W. S. Skinner into his possession in Owyhee County, Idaho.

VIII.

The defendant denies the allegations of Paragraph IX of the complaint.

IX.

The defendant denies the allegations of Paragraph X of the complaint.

Further answering the complaint the defendant alleges:

I.

That the defendant, as sheriff of Owyhee County, Idaho, in the month of July, 1931, had placed in his hands a valid writ of attachment duly issued out of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Owyhee, in an action of debt in which one David Sommerville was plaintiff and W. S. Skinner was the defendant, said writ ordering and directing the defendant as such Sheriff to attach the property of the defendant W. S. Skinner within Owyhee County.

II.

That the said David Sommerville, plaintiff in said action, is and was at that time a resident of the State of Idaho and was a creditor of the said W. S. Skinner.

III.

That pursuant to the aforesaid writ, and pursuant to a writ of execution subsequently issued upon a judgment regularly obtained in the same cause, the defendant took into his possession approximately one hundred head of range cattle belonging to the said W. S. Skinner, which cattle were then in Owyhee County, Idaho, and were in the possession of the said W. S. Skinner and his employees.

IV.

That no claim or demand, as provided to be made by Sections 6918 and 6805 of the Compiled Statutes of

Idaho, was made by the plaintiff herein or by any other claimant.

V.

The defendant further alleges that the property so seized by him under and by virtue of said writ of attachment did not exceed in value the sum of $2100.00.

VI.

Further answering the amended complaint the defendant says that the plaintiff as receiver appointed by the Circuit Court of the State of Oregon for Malheur County has no capacity to sue herein.

WHEREFORE, having answered the amended complaint the defendant prays that the plaintiff take nothing by reason of this action and that the defendant be sent hence with his costs in this behalf expended.

EARL E. GARRITY,

Residence: Silver City, Idaho,

WM. HEALY,

Residence: Boise, Idaho,

Attorneys for Defendant.

(Duly verified.)

(Title of Court and Cause.)

JUDGMENT

Filed Feb. 11, 1932

The trial of the above cause having come on regularly to be heard before the above entitled court sitting with a jury, and the plaintiff having introduced his evidence and having rested his cause and a motion for non-suit having been made for and on behalf of the defendant, and the Court having thereupon rendered his decision, granted the non-suit upon grounds stated by the Court,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that a judgment of non-suit in favor of the defendant and against the plaintiff be, and the same hereby is granted, and said cause is hereby dismissed, and it is ordered that the defendants be and they are awarded judgment for their costs and disbursements herein expended, the same being fixed in the sum of $109.70.

Witness the Honorable Charles C. Cavanah, Judge of said court, and the seal thereof this 11th day of February, 1932.

(SEAL) W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

MOTION FOR NEW TRIAL

Filed Mar. 5, 1932

Comes now the plaintiff herein, by his attorney P. J. Gallagher, and moves the court for its order setting aside the directed verdict and order of involuntary non-suit made and entered in this cause upon the motion of the defendant, on the 18th day of February, 1932.

This motion is based upon the ground that there was error of law in the ruling of the court in granting said motion of the defendant, in the following particulars, to-wit:

(1) The motion of the defendant for a directed verdict was based upon the ground that proof of the demand made by the plaintiff upon the sheriff for the return of the cattle described in the complaint, did not comply with the requirements of Section 6918 of the Idaho Compiled Statutes, inasmuch as said demand actually served was not verified.

The court sustained said motion and directed verdict for the defendant and the plaintiff most respectfully urges that such ruling was erroneous and based upon said ground the plaintiff moves that the judgment of non-suit be set aside and the case set down for new trial.

Respectfully submitted,

P. J. GALLAGHER,
Attorney for Plaintiff.

(Title of Court and Cause.)

ORDER.

Filed Mar. 21, 1932

The motion for a new trial of the plaintiff in the above cause having been submitted, and after consideration thereof by the court:

IT IS HEREBY ORDERED That said motion be, and the same is denied.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause.)

PETITION FOR AN ORDER EXTENDING THE TIME TO PREPARE AND FILE TRANSCRIPT

Filed June 17, 1932

COMES NOW the petitioner, Ivan E. Oakes, as Receiver, by his attorney P. J. Gallagher, and prays the Court for its order extending the time in which to prepare and file a transcript of above proceedings until the 15 day of July, 1932, and until July 15th, 1932, in which to settle and file a bill of exceptions.

P. J. GALLAGHER,
Attorney for Petitioner and Appellant.

(Title of Court and Cause.)

ORDER EXTENDING TIME IN WHICH TO PREPARE AND FILE TRANSCRIPT

Filed June 17, 1932

This matter coming on upon petition of the appellant for an order extending the time in which to file a transcript in the Circuit Court of Appeals in the above-entitled matter, it is therefore

ORDERED that the plaintiff and appellant have to and including the 15th day of July, 1932, in which to prepare and file his transcript in the Circuit Court of Appeals in the above-entitled cause, and until July 15th, 1932, in which to settle and file a bill of exceptions.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause.)

PETITION FOR APPEAL

Filed June 17, 1932

TO THE HONORABLE CHARLES C. CAVANAH, JUDGE OF THE DISTRICT COURT

FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION:

Ivan E. Oakes, as Receiver, your petitioner, who is the plaintiff in the above-entitled cause, prays that he may be permitted to take an appeal from the judgment and order entered in this cause on the 10th day of February, 1932, directing a non-suit in said cause, and the judgment based thereon which was entered in said cause on the 11th day of February, 1932; and also from that certain order made and entered on the 21st day of March, 1932, refusing to grant to the petitioner herein a new trial, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and petitioner also desires that this Court fix the amount of the bond which he shall give and furnish upon said appeal.

Dated this 17 day of June, 1932.

P. J. GALLAGHER,
Attorney for Petitioner and Appellant.

(Title of Court and Cause.)

ORDER ALLOWING APPEAL

Filed June 17, 1932.

NOW COMES Ivan E. Oakes, as Receiver, and

presents to the Court its petition for appeal in the above-entitled cause, praying that its appeal be allowed, and for an order fixing the security to be required of it to perfect said appeal.

IT IS NOW ORDERED that said petition be granted and said appeal allowed upon giving the bond required by law and conditioned as required by law, in the sum of $300.00, said bond to be approved by this Court.

Dated this 17th day of June, 1932.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause.)

BOND

Filed June 25, 1932

KNOW ALL MEN BY THESE PRESENTS: That we, IVAN E. OAKES, Receiver, as principal, and Massachusetts Bonding and Insurance Company, as surety, are held and firmly bound unto BEN LAKE in the full and just sum of three hundred ($300.00) dollars, to be paid to the said Ben Lake, his certain attorneys, successors, or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns jointly and severally, by these presents.

Sealed with our seals and dated this 23rd day of June, in the year of our Lord, 1932.

WHEREAS, lately at an action at law pending in the above entitled court between Ivan E. Oakes, plaintiff, and Ben Lake, defendant, a judgment of non-suit was rendered against the said Ivan E. Oakes, and said Ivan E. Oakes having obtained leave to appeal to the Circuit Court of Appeals of the Ninth Circuit, and having filed a petition therefore in the clerk s office of said court to reverse the said order of non-suit and the citation directed to the said Ben Lake citing and admonishing him to be and appear at the Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the said Ivan E. Oakes shall prosecute his said appeal to effect and answer all costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and effect.

(Seal) IVAN E. OAKES, Receiver,

Principal.

By P. J. GALLAGHER,

Attorney for Principal.

MASSACHUSETTS BONDING AND INSURANCE COMPANY, Surety,

By M. L. GILBERT,

Attorney-in-Fact.

The foregoing bond is approved this 25th day of June, 1932. CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause.)

BILL OF EXCEPTIONS

Filed July 2, 1932

BE IT REMEMBERED that on the 10th day of February, 1932, at Boise, Idaho, the above-entitled cause came on for hearing before the Honorable Charles C. Cavanah, with a jury, the plaintiff appearing by P. J. Gallagher, and the defendant appearing by William Healey. After the opening statement by counsel, the following proceedings were had:

Thereafter a jury was impanelled and sworn and the trial commenced on the said 10th day of February, 1932. Whereupon, the plaintiff, to sustain the issue upon his part, called IVAN E. OAKES, as a witness in his behalf, and the said IVAN E. OAKES testified as follows:

That his name was Ivan E. Oakes; that he resided in Ontario, Malheur County, Oregon; that he was the same Ivan E. Oakes who on March 17, 1931, was appointed receiver in the case of Equitable Trust Com-

pany v. Skinner; that on the 28th day of March he took a certified copy of his authority as receiver and went to the Skinner place and gave it to Mr. Kirt Skinner, the only one there at the time.

Q. At that time was there any livestock on the premises?

A. Yes.

Q. Was there any cattle there?

A. Yes.

Q. Tell approximately how many cattle were on the place?

A. I do not know because part of them belonged to Mr. Skinner and some belonged to the Equitable Trust Company or the bondholders.

Q. Did you examine the cattle on the place at that time?

A. I went around amongst them some, yes.

Q. Did you examine them as to whether or not any of them were the cattle that you were to take possession of when you were there?

A. Yes.

Q. And could you give the court and jury any idea of the number in the field at that time?

A. I could not.

Q. Did you have a list or inventory of the cattle or the property covered by the mortgage?

A. Yes.

He further testified that he made a report to the court of the number of cattle at that time, which is contained in his files. This was March 28, 1931.

Q. Later on were these cattle taken by the Sheriff of Owyhee County?

A. Yes.

He further testified that, the day I came there, March 28, Mr. Kirt Skinner was the only one there. He denied and disputed the right to have them taken over by the receiver at that time, at that particular time. He said there were part of the cattle out on the range and part in the field, and that they would take care of them.

Q. Was there any further conversation had regarding the possession of the property with Skinner after you showed him the certified copy of the appointment?

A. He still objected.

Q. What did he say about taking care of the cattle?

A. He said he would take care of them.

The witness further testified that he left a man on the premises; that his general duties were feeding what cattle and horses there were left there, doing general work and caring for the property; that he gave him instructions from time to time what to do.

The witness then testified that he arranged for the Skinner people to live on the property after the sale in August. That he had further arranged with them to put up the hay on the property, on the farms.

The witness then testified that his occupation from 1926 to 1930 was manager of the Pacific Livestock Company at Burns, which was engaged generally in the cattle business; that his duties were whatever work there was in connection with the operation of that

property, buying and selling property and such other business as that; that there were twelve thousand head of cattle under his supervision; that he was buying and selling on the market; that he was familiar with the class of cattle on the Skinner property as to type and breed; that he left the employ of the Pacific Livestock Company in 1930; that that property is situated in Harney County, Oregon, immediately west of Malheur County, and their cattle ranged in Malheur County; that he had witnessed sales, witnessed other buyers in Malheur County.

Q. I will ask you if you are acquainted with the fair general market value of the cattle that were involved in this transaction in the vicinity they were on or about the first day of July or the latter part of June, 1931?

A. I think I am.

Q. Now I wish you would testify as to what you consider to be the fair general market value of the cows and calves that were involved in this lawsuit about the time the cattle were taken in June?

Thereupon Mr. Healey was permitted to ask the following questions:

Q. I will ask you whether or not you saw these cattle supposed to be taken by the Sheriff?

A. I am not sure of it.

Q. You don't know whether you ever saw them at all?

A. No.

Q. Then you don't know the quality of them from your own knowledge?

A. These particular ones?

Q. That the sheriff seized, yes?

A. I never saw them, no, sir.

Q. Do you know whether they were fat or thin at the time of their seizure?

A. No.

Q. Or whether they were white-faces, Jerseys, or mixed blood?

A. No.

Q. Do you know whether they were beef cattle or milk variety?

A. No, sir.

MR. HEALEY: I object to the witness's testimony in view of the fact that he does not know the livestock.

Q. The question of value depends on the quality of the livestock?

A. Yes,

Q. Whether fat or thin?

A. I didn't hear.

Q. It also depends on the condition of the livestock?

A. Yes.

Q. Upon size and quality?

A. Yes.

MR. HEALEY: I object on the ground that he is not qualified.

THE COURT: I think it would be difficult to place a value upon cattle he has never seen.

MR. GALLAGHER: May I ask a few questions?

THE COURT: Yes.

MR. GALLAGHER:

Q. I will ask you when you got to the range in March you say you seen the cattle under the trust at that time?

A. Part of the cattle on the place, yes.

Q. About how many do you know the percentage of a hundred head?

A. I don't know, I didn't make a count.

Q. The cattle that were on the property that you said you saw in March, did you examine them as to their breeding, classification, and size?

A. Yes.

Q. Were those cattle later turned out of pasture and on the open range?

A. Most of them were, yes.

Q. You were on the ranch frequently after that?

A. Yes.

Q. I will ask you now when you returned to the ranch if these cattle that were in the pasture had been turned out on the range?

A. Yes.

Q. I will ask you how many cattle, about how many cattle you took possession of, constructively or actually passing to you as receiver and as reported to the court under this trust?

Objection overruled.

A. The list given me by the representative of the trustee that was in charge of the place at the time of the foreclosure.

Q. How many was that?

Objection overruled.

A. 141, I believe.

Q. And part of them were in the field and part--

A. Yes.

Q. And as to those you actually saw you are prepared now to state the size of the animals and the general classification?

A. Yes.

Q. Counsel asked you if you had seen the actual cattle that the Sheriff took charge of and you said you didn't. I will ask you if there were any other cattle other than the 141 head that passed to you under the trust?

A. No.

Q. Of the 141 head passing to you listed as on hand by the trustee, how many cattle generally were on the Skinner place when you got out there in March?

A. I didn't count them. Roughly about around 100 head.

Q. On the place altogether?

A. Yes.

Q. You didn't make a separate list of the trustee cattle at that time?

A. No.

Q. Did Skinner advise you how long those cattle had been turned off when you got there?

A. He said a few days.

Q. Where were they ranging at that time, did he say?

A. Near some lake, something like that—reservoir or lake?

Q. In Malheur County?

A. Yes.

Q. You were familiar with range conditions in Malheur County last year?

A. Yes.

Q. Would you be able to state from your acquaintance with the range conditions about the condition the cattle would be in, running on the range at that time; so that you can give an opinion as to their value in June when taken?

A. Range conditions over in Malheur County were somewhat different in different places. Generally during that time it was a little below normal.

Q. I am calling your attention to range conditions in the vicinity where these cattle naturally would range?

A. Below normal.

Q. When you said you knew the reasonable market value of the cattle, were you taking into consideration they would be in on the range at that time; also the breed and type of cattle you took over there?

A. Yes.

Q. Now I want to ask you again, if you can state the reasonable market value of this bunch of cattle in the vicinity in which they were turned upon the range, Malheur County, taking into consideration the cattle

as you knew them and the condition of the range, the condition the cattle would be as about the middle of June, the 21st of June?

MR. HEALY: I object on the ground that he is not qualified. He has no knowledge.

THE COURT: You say "this bunch of cattle". What cattle do you mean?

MR. GALLAGHER: I mean this band of cattle taken over by the Receiver, and which finally passed over to the possession of—

THE COURT: What cattle—how many?

MR. GALLAGHER: He took possession of 141. The Sheriff took possession of 131—138—

THE COURT: Does he know these are the same cattle the Sheriff took over.

MR. GALLAGHER: He testified there was 141 head decreed to him as Receiver. That is all the cattle Skinner had; he testified he didn't see them, the actual cattle after the Sheriff took them over—he didn't know —assumed those cattle were under the trust.

MR. HEALY: The witness stated that he didn't know whether they were the cattle taken over by the Sheriff or not.

THE COURT: That is the difficulty in permitting him to answer. He doesn't seem to know what the Sheriff did take over.

Q. Mr. Oakes, it is stipulated that the Sheriff took over in this case, 17 yearling steers, 20 two-year-old steers, 1 three-year-old steer, 42 cows and calves, 19 yearling heifers, 6 dry cows, 32 calves; it is also stipulated in the record that these were cattle assumed to be owned by William Skinner, taken by the Sheriff as the property of William Skinner. Now with that information I will ask you to say whether you saw, on any trips to the ranch in March, or afterwards, any of the cattle the Sheriff took over as the property of William Skinner?

A. I don't think there is any question but what I saw part of them. I didn't see them after the Sheriff took them.

Q. You never did see them after the Sheriff took them?

A. No, sir.

Q. But you would say you were familiar with the Skinner cattle before the Sheriff took them over?

A. Yes.

MR. GALLAGHER: I will renew my question.

THE COURT: The answer must be confined to cattle he saw himself. Cattle he had knowledge of himself.

Q. Will you give your best judgment as to the market value of the cattle, taking them class by class —take the yearling steers?

A. Twenty-five dollars.

Q. Per head?

A. Yes.

Q. Two-year-old steers?

A. Forty dollars.

Q. One three-year-old steer?

A. I wouldn't hardly know. A three-year-old steer would probably run forty-five or fifty dollars.

Q. Cows and calves?

A. About forty dollars.

Q. Cow and the calf?

A. Yes.

Q. Yearling heifers?

A. Twenty dollars.

Q. Dry cows?

A. Between twenty-five and thirty dollars.

Q. Can you fix a figure so that we can compute?

A. Say twenty-five dollars.

Q. Have you taken these figures and computed the total amount of your estimate?

A. Yes.

Q. What would you say was the total computation you arrived at?

A. $3,235.00 I believe.

On cross examination the witness testified that he lived at Ontario, Oregon; that he was living there and had an office last year; that W. S. Skinner's ranch was in Jordan Valley; that this property is west of Jordan Valley town, that it is a large place; that the land on the Skinner ranch was under the mortgage foreclosure in which the witness was appointed receiver.

Q. Do you know whether or not Skinner had cer-

tain ranches leased from other parties with which this trustee had nothing at all to do?

A. I didn't at that time, no.

Q. You have since learned that Skinner did have other places leased?

A. Yes.

Q. What were those other places, if you know?

A. I do not believe I could name them.

Q. There was the Reservoir ranch, belonging to Summerville, leased by Skinner was there not?

A. That is what I have heard.

Q. The trustee had nothing to do with that ranch?

A. I couldn't say.

Q. You know, being appointed receiver, what property you had jurisdiction of?

A. That wasn't listed.

Q. Wasn't property that you had jurisdiction of, the Reservoir ranch, was it?

A. I didn't consider it so, no.

Q. Do you know whether it was or wasn't?

A. It wasn't listed as one of the assets I was supposed to take over.

Q. Were you ever at the Reservoir ranch?

A. No sir.

Q. You never went there in the summer or spring?

A. No sir.

Q. Did you ever send anybody over there?

A. No sir.

Q. In addition to the Reservoir ranch, didn't Skinner have the Star ranch, in Owyhee County, also leased

from Mr. Summerville?

A. I have heard that.

Q. That was your understanding?

A. Yes.

Q. You had no jurisdiction over the Star ranch?

A. No sir.

Q. Do you know whether or not Skinner—what ranches he was accustomed to run his cattle on in connection with—wasn't it the Reservoir ranch and the Star ranch, leased from Summerville?

A. I couldn't answer that.

Q. You haven't very much familiarity with the country?

A. I have been in Malheur County since 1910. I have been in Jordan Valley before this foreclosure suit —probably there ten or a dozen times.

Q. I am talking about the range country beyond?

A. No.

Q. Skinner had two range or summer ranches, the Reservoir ranch in Malheur County and the Star ranch in Owyhee County, which you as Receiver had no jurisdiction of?

A. No sir.

Q. You had no connection with those ranches that he operated cattle on in the summer time and spring?

A. I have no knowledge.

Q. You do not know?

A. No.

Q. On the 28th of March you went over to the Skinner ranch?

A. Yes.

Q. That is the place—that is not one of the places that Skinner had leased from Summerville?

A. No, that is property that he owned over there.

Q. That is the ranch that was included in the mortgage to the Equitable Trust Company?

A. Yes.

Q. When you got to the ranch, what time of day was it?

A. Before noon if I remember it.

Q. And who was there?

A. Kirt Skinner.

Q. W. S. Skinner was defendant in the action where you were appointed Receiver?

A. Yes.

Q. What conversation did you have with Kirt Skinner?

A. I handed him that paper and told him that the court had appointed me receiver and asked him to read it over.

Q. What did he say?

A. I don't remember that he said anything particularly right at the time, and then a little later he stated that for the present at least he would have to refuse to act under the order.

Q. That he would have to refuse to give you possession of the ranch?

A. Yes.

Q. What did you say?

A. I didn't answer.

Q. What did you do?

A. I went back to Jordan Valley and I believe I called Mr. Gallagher; I am not sure.

Q. Then what did you do?

He then went back to Ontario and left his man there, who stayed until he took sick and then was away for around two months and then came back. While he was sick he spent most of the time at Nampa under the doctor's care. The witness knew in addition to the W. S. Skinner stock the boys had certain stock not included in the property and over which he had no jurisdiction; that of the stock he saw on the 28th of March, some belonged to W. S. Skinner and some belonged to the boys; that he did not count the cattle at that time; that he examined some of the brands; there were two different brands.

Q. Mr. Kirt Skinner told you where the cattle were that you had come to look at?

A. He did.

Q. Where did he say they were?

A. As I remember it, it was the Reservoir Ranch.

Q. You had no jurisdiction over the Reservoir Ranch as you understood it.

A. No, sir.

Q. You were not entitled to possession of the Reservoir Ranch?

A. No, sir.

Q. Did you understand from Skinner that these cattle that you were supposed to take charge of were in a field on the Reservoir Ranch.

A. I don't think he said; I don't remember him saying that way, he said they were at the Reservoir Ranch.

Q. That was the 28th of March, wasn't it?

A. Yes.

The witness testified that it is proper to turn cattle out about the middle of March; that they were turned out earlier in 1931 than the year before.

Q. At any rate, you understood that the W. S. Skinner cattle were on the Reservoir Ranch; Kirt Skinner said they were in the field there?

A. There was nothing said whether they were in the field or outside.

Q. You assumed they were not in the field?

A. I don't remember forming any opinion either way.

Witness testified that he didn't go to Reservoir Ranch to look at any cattle; that he did not send anybody over there; that he didn't know how long the cattle remained at the Reservoir Ranch; that he didn't know which of the Skinner boys was at the Reservoir Ranch looking after the cattle; that he didn't know the circumstances under which the Skinner boys turned these cattle off the Reservoir Ranch; that he didn't know when they were turned on the range nor under what circumstances nor when nor by whom they were turned off the ranch.

Q. You don't know anything about it — do you know whether or not it was customary to summer these cattle in the neighborhood of the Star Ranch?

A. I do not know.

Q. That was their summer range?

A. I do not know.

Q. If turned on the range they would naturally go up around the Star ranch in Owyhee County?

A. I do not know.

Q. Where did you suppose they were going then?

A. I was not familiar, I couldn't say.

Q. You didn't go down to find out?

A. No sir.

Q. Or send anybody to find out?

A. No sir.

Q. You have since learned because these cattle were seized by the Sheriff of Owyhee County that as a matter of fact they did go in the vicinity of the Star Ranch in Owyhee County?

A. That is where they were taken, yes.

Q. Did you go over there to see them when they were seized by the Sheriff?

A. I did not.

Q. Did you send anybody over there?

A. No sir.

Q. Assuming, Mr. Oakes, that in March it was still necessary to have these cattle on feed or pasture for some little time, did you make arrangements to provide pasture for them?

A. I did not.

Q. You made a report about the first of July?

A. Yes.

Q. And the report you made was correct as near as you could tell?

A. Yes, as near as I knew.

CROSS EXAMINATION BY MR. HEALY CONTINUED:

Q. While these cattle which were seized by the Sheriff of Owyhee County in that county, while they were in Owyhee County, did you turn them into the county authorities for taxation purposes?

A. No, sir.

Witness stated he did not know whether or not they were assessed in that county; that he paid no taxes on the cattle in that county; that they were never assessed as far as he knew, not turned in to the state or county authorities for assessment purposes; that he did not know whether they had been assessed to Skinners in Owyhee County the year before; that after the sale in August he made arrangements for the Skinners to stay on the ranch; that the sheriff had made the sale in the foreclosure proceedings on the 22nd of August and witness had nothing to do with the sale.

Thereupon the following proceedings were had:

MR. GALLAGHER: It is stipulated that the judgment roll on the foreclosure suit in Malheur County, Oregon, may be used by both parties for such purposes as they see fit.

MR. HEALY: Do you want the whole judgment roll?

MR. GALLAGHER: Yes.

MR. HEALY: We are not offering—we have no objection to any part that has any relevancy.

THE COURT: Admitted.

Witness's attention was thereupon called to a part of the judgment roll which was an order bearing filing date of August 24, 1931.

Q. I call your attention to an order in the Circuit Court for Malheur County, which starts out this way: "This matter coming on for hearing upon motion of P. J. Gallagher"—that is Mr. Gallagher here now?

A. Yes.

Q (Continuing). "Attorney for the plaintiff and Ivan Oakes, Receiver appointed by the Court herein"—that was upon your application?

A. Yes.

Q. This goes on to say: "That it appearing that the personal property described in the mortgage in this case has not been sold, It is Ordered that the sale of the personal property be deferred until such time as said property can be conveniently gathered and presented for sale." Now what was this sale of personal property?

A. These cattle.

Q. This goes on to say: "It further appearing that said real property"—that is the Skinner ranch?

A. Yes.

Q (Continuing). "Sold to the Equitable Trust Company as trustee for the bondholders, the said Equitable

Trust Company desires the Receiver, Ivan Oakes, heretofore appointed, to be put in possession of said property"—that order was made at that time was it?

A. Yes.

Q. Under date of the 21st of August, 1931?

A. Yes.

Q. Why did you need an order putting you in possession if you were already in possession.

MR. GALLAGHER: I object to that as a conclusion on what appears herein the record. After the sale, the purchaser at the sale is entitled to possession, any may elect someone to take possession for him. Why he did it, would be a conclusion of the witness.

THE COURT: The Court made this order?

MR. HEALY: Made it on his application. I asked him why he made application for an order putting him in possession if he was already in possession of the ranch.

Q. You applied for this order, didn't you, and Mr. Gallagher?

A. Yes.

Q. Why did you apply for it if you were already in possession of the ranch?

MR. GALLAGHER: I object to that as incompetent, irrelevant and immaterial.

THE COURT: That presents a legal question. One may apply for an order for possession of property

in order to have the Court say finally whether it is a correct possession. He might be in possession temporarily, but he would still have the right to ask the court to put him in possession. That is customary.

MR. HEALY: I don't desire to argue with the Court on the subject.

THE COURT: You are merely asking the witness for a legal conclusion. He might have been in possession, and wanted the Court to confirm it.

MR. HEALY: He doesn't say so—is the objection sustained?

THE COURT: Yes.

Thereupon the following question was asked:

Q. I call your attention to this part of the order: "It is ordered and adjudged that the said Ivan Oakes, Receiver, be immediately put into possession; that the Sheriff of said County is hereby ordered and directed to remove the defendant W. S. Skinner and Ella Skinner, or persons claiming under them, from the premises, and placing Ivan Oakes in possession thereof."

THE COURT: I don't deny you the right to ask him whether or not he was in possession, actual possession, you may inquire on that.

The witness then testified that Skinners were on the place at the time the order was made; that they ran the irrigated lands and meadows and lived on the place; that the witness lived in Ontario; that the order of August 22 was made after the Sheriff seized the cattle

in Owyhee County; that after the court's order of August 22, he arranged with the Skinners that the Skinners harvested the hay crop, sold it, kept the money, did not deliver any part to the witness and sold the pasture and received the money for the pasture; that on August 22, the witness's employee, Kerchener, went out to the Skinner place with the Sheriff. He had been away at Nampa for several months during which time the witness had nobody at the place. The witness arranged with Skinners after August 22 to board his man there; that the witness did not know about a road between the Skinner Ranch and the Reservoir Ranch; that he understood there was such a road; he didn't know the distance between the ranches; that witness claimed to have no jurisdiction or right of possession over the Summerville Ranches, where these cattle were.

On redirect Examination, the following took place:

BY MR. GALLAGHER:

Q. Counsel asked you about what arrangements you had with the Skinners for raising the hay crop and disposing of it; what percentage did you get, if any?

Objection overruled.

Q. What are the facts as to the arrangements you had?

A. Skinner put up the hay crop and gave us 200 tons.

Q. Who bore the expense of putting up the hay?

A. Skinner.

Q. What was he to receive in addition to the balance

of the hay; what other crops did he get besides the hay?

A. Pasture, part of it.

Q. He received part of the pasture?

A. Yes.

Witness then testified that Skinner delivered to him 200 tons of hay; that these arrangements were made the first of July; that the Skinner family raised the hay crop and delivered 200 tons to the witness; that the witness had a man on the ranch, went there March 28, stayed a month and a half, became ill, and left, went back with the Sheriff on August 22 and remained there ever since. Witness's first knowledge that the cattle had been into Idaho was about July 1st; that he found out through Mr. Ben Hunt; the Skinners didn't tell him; that thereafter he went over to Silver City, had a conference with the Sheriff and shortly after that this case was filed; that he never gave Skinners or anybody else any permission to take the cattle out of Malheur County into Owyhee County; that he did not know they were moved or were going to be moved that William Skinner was not at the ranch when he went there in March the first time; that he saw the premises before he was appointed receiver in 1930; that he had gone all over the place, saw around a thousand head of cattle; that they were an exceptionally fine bunch of cattle, Durhams and some White-face Herefords, and a few Jerseys belonging to a third person, which never passed to him under the trust.

On Re-Cross Examination, the witness testified that the information about the number and kind of cattle

which he put into his report as of July 1st he obtained through another party, Mr. Stewart Fagan.

It was thereupon stipulated that the Reservoir Ranch was in Malheur County, Oregon.

It was further stipulated as follows:

MR. GALLAGHER: Counsel and I have agreed that I may introduce a copy of a letter I wrote to the Sheriff. I offer in evidence a copy of the demand made by the receiver through his attorney for the return of these cattle, dated July 28, 1931, carbon copy of a letter written by myself.

THE COURT: Any objections?

MR. HEALY: I object on the ground that it is not the kind of demand that the statute specifies, and I would like briefly to call the attention of the court to the reason for my objection. The Idaho statute—

THE COURT: I am familiar with that statute; demand has to be made on the Sheriff.

MR. GALLAGHER: Has to be made to the Sheriff.

THE COURT: I thought that was what counsel said.

MR. HEALY: It is not a verified demand. The statute requires that it be verified under oath.

MR. HEALY: I will read it to your Honor.

Statute read.

MR. HEALY: California has the same statute, and the California courts hold that unless the statute is complied with, the Sheriff has no authority under such a demand and if he releases a property upon such a demand be made unless it is in the form prescribed by the statute, he subjects himself to liability for the value of the property on the part of the demand creditor.

THE COURT: (After argument.) Overruled; the exhibit may be admitted. (This is plaintiff's Exhibit 2 and is as follows):

"July 28, 1931.

"Sheriff
Owyhee County
Silver City, Idaho.

Dear Sir:

"I understand that you are holding certain cattle in an attachment issued in the case of Dave Summerville -v- W. S. Skinner, which case is now pending in the district court of Owyhee County, Idaho.

"This will notify you that Mr. Ivan Oakes was appointed receiver in a certain suit in Malheur County, Oregon, wherein the Equitable Trust Company, a corporation of Portland, Oregon, is plaintiff and W. S. Skinner and others are defendants. He was so appointed on March 17, 1931. He immediately qualified and took possession among other things of the cattle you are now holding, being some 145 head of mixed range cat-

tle branded SS on the left side or hip. *These cattle* These cattle were placed upon the range in Malheur County, Oregon and Owyhee County, Idaho, by said receiver.

"Formal demand is now made upon you for the return to such receiver of all cattle of that description and brand, that you are now holding in your possession. Refusal to return these cattle will compell the said receiver to institute proceedings for the recovery of said stock.

Very truly yours,

Ivan E. Oakes, Receiver

PJG:CL By"

The judgment roll which was introduced by the plaintiff and marked plaintiff's Exhibit 1, contains a complaint in equity; an order appointing a receiver; a receiver's bond in the sum of $10,000; the sheriff's return showing service of the summons upon all of the defendants named therein; an order of default as to all of the defendants; the default of the defendants W. S. Skinner and Ella Skinner, being entered as of the 24th day of April, 1931; report of the receiver filed July 1, 1931, which exhibit insofar as it pertains to these cattle is as follows:

"That your receiver was appointed by an order of this court on the 17th day of March, 1931, thereupon qualified by executing and filing surety bond in the sum of $10,000, which was approved by this court, and by filing an oath as such receiver, and thereupon proceeded to take an inventory of the

personal property on the above described premises; that such inventory was taken by me on the 21st day of March, 1931.

"That at that time most of the cattle and horses covered by the trust herein and belonging to the defendants William Skinner and Ella Skinner, had been turned on the open range; that one Stewart Fagan, an agent and employee of the Sheriff, furnished me with an itemized statement of such cattle as follows:

"25 head of two-year-old steers; 18 head of one-year-old steers; 27 head of one-year-old heifers; 16 head of calves; 2 bulls; all branded SS on the left hip.

"Approximately 70 head of work horses and mares, and approximately 35 head of saddle horses, all branded wine glass, made thus on the left shoulder.

(Signed) IVAN E. OAKES
Receiver"

There is other property described in the report which is not pertinent to this case.

This judgment roll and the copy of the proceedings therein is entitled in the Circuit Court of the State of Oregon for Malheur County, Equitable Trust Company, formerly Lumbermen's Trust Company, of Portland, Oregon, a corporation, plaintiff, v. W. S. Skinner and Ella Skinner, husband and wife, Willis G. Thompson, and Lumbermen's Securities Corpor-

ation, defendants. The complaint recites the corporate nature of the plaintiff; that Ella Skinner and W. S. Skinner are husband and wife and are designated as mortgagors; that the defendant Securities Company is a corporation; that the mortgagors on March 1, 1922, made a certain indenture of mortgage to the plaintiff, describing among other things a certain lot of cattle consisting of from 650 to 700 head branded SS on the left hip, of which there were about 460 cows, 14 shorthorn bulls, 200 yearling steers; that said cattle were then located on the lands described in said mortgage; that the said complaint further alleged default in the payment of the bonds secured by said mortgage, and that there remained due and unpaid the sum of $75,000; that the said complaint contained the following paragraph relative to personal property described in this cause of suit:

> "That there remains on said premises at the present time a large number of horses and cattle of various kinds, ages, and classes, to wit, 200 head of cattle and 200 head of horses, and a large amount of farm machinery, household furniture equipment and supplies of various kinds and natures, and that the property subject to the lien of said mortgage or trust deed is entirely inadequate security for the protection of the holders of the bonds issued thereunder and now outstanding, and that, unless a receiver of said mortgaged property be appointed, the interests of this plaintiff and of the bondholders it represents will be greatly endangered and the value of the security which your plaintiff has for

its protection will be further greatly impaired and diminished, and that it is necessary for the protection of this plaintiff and of the holders of said bonds that a receiver be appointed in this cause of the mortgaged property and of the earnings, revenues, rents, issues, profits, and other income thereof."

Said judgment roll also contains a decree of foreclosure in which it is found that there is due, owing, and unpaid from the defendants to the plaintiff the principal sum of $75,000, attorney's fees in the sum of $2350, and other sums and amounts immaterial, and then contains this paragraph:

"That the said receiver so appointed has reported to this court, which report is now on file; that he has taken into his possession and now holds certain personal property in said report described, a more particular description of which is contained in said report, which is hereby referred to. It is therefore ordered, adjudged, and decreed that all the real and personal property described in said indenture and which is now subject to the lien of said trust deed, be sold to the satisfaction of said judgment; that in making said sale, it is deemed for the best interests of all the parties that the personal property be sold separately upon the premises hereinafter described."

Thereafter, the court made an order confirming said sale, in which it was recited that the real property had been sold, and confirming the sale of said real property; that in said proceeding there was on the 24th of

August made and entered an order on which counsel on cross examination interrogated the witness Oakes, which order is in words and figures as follows, to wit:

"This matter coming on for hearing upon the Motion of P. J. Gallagher, attorney for the plaintiff, and Ivan E. Oakes, the Receiver appointed by order of Court herein, and it appearing from said Motion that a sale of the real property has been held pursuant to the execution in this case and that upon the sale of said real property there was not sufficient money realized to satisfy said judgment and that at the present there is substantial deficiency as a result of said sale.

"And it further appearing that the personal property described in the mortgage in this cause has not been sold for the reason that said property consists in part of horses and cattle, which are now grazing on the public domain and it would be impossible to gather said horses or cattle, owing to the scarcity of water on the public range.

"It is therefore ordered that the sale of said personal property be deferred until such time as said property can be advantageously gathered and presented for sale and that the receiver continue in possession of said personal property and care for the same.

"And it further appearing that at the sale of said real property it was sold to the Equitable Trust Company as Trustee for the bondholders and the said Equitable Trust Company desires the receiver Mr. Ivan E. Oakes, heretofore appointed to be put into possession of said property.

"It is therefore ordered and adjudged, that the said Ivan E. Oakes, as Receiver be immediately put into possession and that the sheriff of this county is hereby ordered and directed to remove the defendants W. S. Skinner and Ella Skinner, and all persons claiming by, through or under them, from said premises, and to place said Ivan E. Oakes in possession thereof to hold until there is redemption of said premises according to law or until the further order of this court.

"Dated this 22nd day of August, 1931.

W. W. WOOD

Circuit Judge"

Said judgment roll and exhibits contained therein shows that the complaint was filed in the Circuit Court of Malheur County on March 17, 1931; that the bond of the receiver was filed on March 18, 1931; order appointing receiver was filed on March 17, 1931, which order among other things recites; that Ivan E. Oakes was appointed receiver of all the assets and lands of W. S. Skinner and Ella Skinner covered by the trust deed including all of the real, personal, and mixed property of every kind and nature. That this receiver gave a bond in the sum of $10,000.00. That the receiver be and is authorized, empowered and directed to take immediate possession of all and singular of the real and personal property described in such deeds of trust; To exercise the powers usually exercised by receivers, that the defendant Skinners, his agents and employees, persons claiming under them, are ordered,

commanded and directed to turn over to the receiver the possession of all property, real and personal, then in their hands and under their control and that the defendant Skinners be restrained from transferring, selling or disposing of said property or from distributing or in anywise interferring with the receiver in his possession, control or operation. That the receiver be further empowered to institute and prosecute such suits as may be necessary in his judgment to protect the trust therefore vested in him, and that the receiver at quarterly periods thereafter file a report with the court.

That thereafter the plaintiff called his witness, H. Y. Blackwell, who testified that he resided in Portland, Oregon, that he had been engaged in the cattle business, buying and selling, all through Malheur County, Eastern Oregon and Western Idaho; that he was so engaged in June, 1931, and that he was then buying beef cattle on orders.

That in 1908 he had bought the Skinner cattle and that since that time he had seen them come on the market; He could not say how many years he had seen the Skinner cattle on the market; that he was in the Jordan Valley country three or four years ago and saw some of them on the range and saw them in the feed-lot three or four years ago; that he is familiar with the range conditions in the southern part of Malheur County; that it got pretty dry during the months of July and August of 1931.

Q. Now in this controversy there is involved a bunch

of cattle classified as follows: 17 head of yearling steers, 20 head of two year old steers, 35 head of cows and calves, 19 yearling heifers, and some dry cows. Now taking into consideration your knowledge of the range last year, and the market condition for cattle of this class, and the type of cattle you have heard described here, and as you know them, what would you say was the reasonable market value of those cattle on the range in the vicinity of Jordan Valley about the middle of June last year.

A. I put up some cattle in June, $30 for yearlings—

Q. Yes or no?

A. Yes about $30 for yearlings—

THE COURT: Yes or no.

THE WITNESS: Yes.

Q. Now then will you give the market value of that group of cattle by classes as outlined to you?

MR. HEALY: I object to that as a conclusion of the witness and no proper foundation laid to show knowledge of the conditions, weight, etc., of these particular cattle, or any of the conditions that go to the question as to what these cattle were worth on the market.

THE COURT: He would have to have knowledge of these particular cattle in order to give the market value.

MR. GALLAGHER: The witness saw the band

in the winter two years ago. He knows the water conditions and the range conditions.

THE COURT: What condition were they in about the time of the alleged taking. He said he saw the cattle two years previous to that. They might have been in different condition two years afterward. They might have been in poorer condition or better condition.

Q. Were you in the Jordan Valley country last summer?

A. No sir.

Q. Were you in the Malheur country where range conditions were similar to the Jordan Valley country?

A. Yes, around Juntura.

Q. Have you ever seen the Skinner cattle recently as two years ago now.

A. Two years ago this winter was the last.

Q. This winter, two years ago?

A. Yes.

Q. Fourteen months prior to this time alleged, June 1931—before that time how many—before the occasion that you saw them two years ago, how recently had you seen them before that so as to keep in touch with the kind of cattle they were?

A. I couldn't say just exactly. Three years ago I was out on the range, and we saw some of the cattle, saw them on the range, but I think that is three years ago in May, May or June.

Q. Did you see the Skinner cattle upon the feed lots the following winter after that?

A. Yes.

Q. That is the last you remember seeing them?

A. Yes.

Q. Did you see any cattle that Sam and Jim Hunt bought of the Skinner bunch last spring?

A. I saw quite a lot of those.

Q. That was after you saw them on the feed lot?

A. I saw some Hunt cattle last winter.

Q. Five or six months prior to June, 1931?

A. Yes.

Q. How many did you see at that time, and what class?

A. Mostly cows—I got a couple myself from Payette on feed.

Q. Those were part of the Skinner cattle that Jim Hunt brought down there?

A. He brought them to Bus Wilson and his partner. I didn't examine the irons. He told me they were the Hunt cattle—the Skinner cattle.

MR. GALLAGHER: He says he saw part of the same bunch of cattle four or five months prior to the middle of June.

THE COURT: He doesn't testify that he saw all of them—he only saw part of them. In the face of the objection, do you want the Court to pass upon the value of the entire cattle when this man only saw part of them. We do not know whether he saw ten or twenty head. Merely guessing at it. Haven't you got somebody that saw these cattle, and can give a

description of their condition, weight, etc.? Can't somebody give that? We are guessing too much—too much uncertainty.

MR. GALLAGHER: I think the jury is entitled to know generally the kind of cattle, breed, etc.

THE COURT: Yes, he can testify to that. I am not precluding you from doing that.

Q. State to the jury the general breed of the cattle, whether they be large, small or otherwise.

MR. HEALY: That is indefinite—what cattle do you refer to?

MR. GALLAGHER: The Skinner cattle, of course.

A. All I seen of the Skinner cattle was beef breed—Durhams and white faces.

Q. And were they heavy boned cattle?

A. I considered them a good class of cattle, a good class of eastern Oregon and Idaho cattle.

Q. Could you tell the market value in that territory that I described to you awhile back, of cows, Durhams, cross breed cows, that had been raised on the range in that vicinity, in Malheur County, and also to the market value of yearling steers and two year old steers of the same breed and the same blood or type that you knew these to be—

A. They were higher in June than later in the fall.

Q. Yes or no?

A. Yes.

Q. You may tell us as to the market value of the cattle, class by class.

MR. HEALY: I object to that as immaterial.

THE COURT: Overruled.

Q. What were the cows worth, and the calves?

A. I sold some cows and calves in the fall. The general price I figured was thirty-five to forty dollars.

Q. Now dry cows?

A. Thirty-five dollars?

Q. And the yearling heifers?

A. Yearling heifers and steers were selling from twenty-five to thirty dollars during the months of June and July.

Q. Two year old steers?

A. About forty dollars.

Q. Three year old steers?

A. There were very few three year old steers sold that month—they were sold later from four to five cents.

CROSS EXAMINATION

BY MR. HEALY:

Q. You never saw this particular bunch of cattle the Sheriff of Owyhee County seized, did you?

A. No.

Q. Do you know whether it was the tail-end of the Skinner bunch?

A. I don't know.

Q. You testified as to the value of the cattle, based upon a very good grade white face cattle?

A. Yes.

Q. Strictly beef cattle?

A. Beef type, white face and Durham.

MR. HEALY: We move to strike the testimony of the witness as to valuation, for the sake of the record. I think it is of no aid to the jury above showing as to what kind of stuff this was.

THE COURT: The difficulty is as to the cattle here in question—the witness said he saw part of them—we do not know whether he saw ten or a hundred head. He is testifying as to the value generally of cattle. Now to do that you have got to make comparison with cattle upon which he is giving the valuation. These cattle may have had different treatment. He said he saw a portion of them sometime prior to that time. We do not know whether their condition was the same as when he saw them—whether they decreased in weight or increased. You have to guess at it.

MR. GALLAGHER: I think that is covered by the fact that they were range cattle—he is only testifying as to the kind of cattle he saw, and all the cattle he saw were of good grade beef cattle. This witness's testimony is based upon that, and having seen parts of the same bunch of cattle as late as four or five months before that. It would be for the jury to say

how much weight to give his testimony based upon the opportunity he had to see the cattle.

THE COURT: He saw part, how much—are you going to guess as to the rest. He says he saw part. He doesn't say how many head. He doesn't say whether they were cows or calves or what. How are you going to figure value from that? It is impossible.

MR. GALLAGHER: He says he saw cattle of different grades.

THE COURT: It hasn't been proven that they were the same as the time he saw them.

MR. GALLAGHER: That would all depend upon range conditions. He is basing his testimony upon range conditions. That goes into the consideration of his estimate as to what the value was. I think we have proven that he was acquainted with parts of this particular brand of cattle. He saw part of them a few months before.

THE COURT: You say you saw part of them how many did you see?

THE WITNESS: Two hundred cows that Wilson and his partner bought.

THE COURT: In what condition?

THE WITNESS: In fair condition they were.

THE COURT: You said you saw some a few

months before the seizure?

THE WITNESS: Sometime before—I saw them in the winter. I was through that country two or three times during the winter.

THE COURT: You are giving your opinion as to two hundred head?

THE WITNESS: Yes.

THE COURT: I will limit it by that, unless you show the cattle were in the same condition, all of them, as the time he saw them—connect it up.

MR. GALLAGHER:

Q. As to the respective condition of the cattle—can you say whether or not these cattle, having been turned upon the range in the south part of Malheur County, or Jordan Valley, whether or not they would be in better condition in June than the condition you saw them in in the winter?

A. I do not think so, because it was winter and they were on feed.

Q. Did you take into consideration, in making your estimate of the value, the fact that these cattle on the range would not be in as good condition as you saw them in the field?

A. What was the question?

Q. Did you take into consideration the fact that these cattle would not be in as good condition as when

you saw them in the pasture, assuming that the range would not be good?

A. They wouldn't be as good condition as the cattle on feed.

Q. Are you making that allowance in putting the price on them?

A. Certainly.

Q. In your estimate you are assuming that cattle on the range would not be as valuable as those in the feed lot or pasture?

A. The estimate that I put on the class of cattle were prices that they were sold at during the months of June and July.

Q. Off the range?

A. Yes.

Q. You take that difference into consideration when you put that market value on the range cattle?

A. Yes, about the price they were selling at at that time.

MR. HEALY: Has the Court ruled?

THE COURT: I have limited it to the two hundred head he saw.

MR. HEALY: Those were not identified as being cattle we have anything to do with.

THE COURT: He saw two hundred head four months after they were seized. The only opinion he

can give would be as to those he saw.

RE-CROSS EXAMINATION

BY MR. HEALY:

Q. Where were the cattle branded and how were they branded?

A. I didn't examine the brands.

The witness thereupon testified that he understood that the Skinners had two different brands; that he didn't know which was which; that he was not looking at brands; that he didn't see any of the cattle that were sold in Idaho; the cattle he saw were in Idaho; that he saw, but he didn't pretend to testify or give value of any cattle that the Sheriff seized in the case.

MR. HEALY: I renew the motion, for the sake of the record.

THE COURT: I will make the same ruling I made a minute ago.

MR. GALLAGHER: That is the plaintiff's case.

MR. HEALY: Just a minute—may it be stipulated that the writ of attachment under which the defendant Sheriff seized the cattle was issued in the District Court of—

MR. GALLAGHER: I presume so—I haven't examined the record.

THE COURT: Does plaintiff rest?

(Attorneys consult.)

MR. HEALY: It is stipulated that the writ under which the Sheriff seized the cattle was issued out of the District Court of Owyhee County in the state of Idaho in the case of Summerville, plaintiff vs. W. S. Skinner, defendant.

THE COURT: Very well. Does plaintiff rest?

MR. GALLAGHER: We rest.

MR. HEALY: I would like to make a motion for non-suit.

THE COURT: Very well. Discuss briefly your authorities. I will excuse the jury for a few minutes.

Whereupon the jury was excused, and the following motion made:

MR. HEALY: The defendant moves that the plaintiff be non-suited, and dismissal entered, upon the ground and for the reason that the proof shows that plaintiff has no capacity to sue in the courts of this state, inasmuch as he has neither title to the property under the Oregon law or the order of the court appointing him, nor had actual possession of the property, either in the State of Oregon or the State of Idaho, and second, on the ground that the action against the Sheriff, being an action in replevin, will not lie, in the United States Court to take property from the possession of a state court. We have a number of authorities. It was also urged by counsel for defendant in

support of his motion that the demand made on the Sheriff was not in compliance with the statute, because not verified by claimant.

Whereupon, after argument of the motion by both counsel, the following proceedings were had:

THE COURT: I will have to grant the motion for non-suit upon the ground that the proof is insufficient to initiate the liability on this hearing. Call the jury in, and I will grant the motion.

MR. GALLAGHER: May I have an exception, your Honor?

THE COURT: Yes.

(Jury recalled.)

THE COURT: Gentlemen, a motion for non-suit has been made in this case by the defendant, in which the defendant asserts certain propositions of law which he claims is applicable to the evidence—that the evidence is insufficient to warrant a recovery. The court has reached the conclusion under the law that the evidence is insufficient to submit the case to you. For that reason the motion for non-suit is granted, and you are discharged from further consideration of the case.

MR. GALLAGHER: It is stipulated that I might withdraw this original file.

THE COURT: It may be done.

MR. GALLAGHER: At this time counsel for

the plaintiff excepts to the ruling of the court granting a non-suit in this case.

Forasmuch as the matters above set forth do not fully appear of record, the defendant tenders this, his bill of exceptions, and prays that the same may be signed and approved by the Judge of this Court.

DATED June 27, 1932.

P. J. GALLAGHER,
Attorney for Plaintiff and Appellant.

The foregoing Bill of Exceptions was filed on the .....day of June, 1932, within the time allowed for filing the Bill of Exceptions by order of the United States District Court for the District of Idaho, Southern Division, dated June 17, 1932, extending the time to July 15, 1932.

CHARLES C. CAVANAH,
United States District Judge for the District of Idaho, Southern Division.

(Title of Court and Cause.)

STIPULATION

Filed July 2, 1932

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties that the

foregoing Bill of Exceptions contains all the evidence given and proceedings had on the trial of this action; that it is correct in all respects; that the same may be approved, allowed, settled, and ordered filed and made a part of the record herein by the Honorable Charles C. Cavanah, the judge who presided at the trial of said cause, upon the filing of this stipulation without further or other notice to defendant or his counsel.

P. J. GALLAGHER,
Attorney for Plaintiff.

WM. HEALY,
Attorney for Defendant.

(Title of Court and Cause.)

ORDER

Filed July 2, 1932.

This matter coming on for hearing upon the motion of the appellant for an order settling and approving the bill of exceptions tendered herein and the parties by their respective counsel, having heretofore stipulated that the foregoing bill of exceptions so tendered contains all of the evidence given, and proceedings had on the trial of this action and further stipulated that the same is correct in all respects and that the same may be approved, allowed and settled, and an order filed with-

out further notice to defendant or his counsel, and the said stipulation being filed herein be a part of the records of said cause based thereon and upon the records and files of said cause,

It is therefore ORDERED and CERTIFIED that the plaintiff's bill of exceptions contains all of the evidence given or offered on the trial of the cause of Ivan E. Oakes, as Receiver v. Ben Lake, Sheriff of Owyhee County, Idaho, and correctly shows all of the proceedings had upon said trial, and that said bill of exceptions is correct in all respects and is hereby approved, settled, and made a part of the records herein.

Dated at Boise, Idaho, this 2nd day of July, 1932.

CHARLES C. CAVANAH,

District Judge.

(Title of Court and Cause.)

STIPULATION

Filed July 2, 1932.

IT IS HEREBY STIPULATED by the parties to this cause that plaintiff's Exhibit 1 may be omitted from the Bill of Exceptions and sent by the Clerk of the trial court direct to the United States Circuit Court of Appeals in its original form; and further, that the

said Exhibit 1 need not be printed in the record. This agreement is made in conformity with an order of the trial court by the presiding judge that such exhibit shall be omitted from the record and sent direct by the Clerk of the trial court to the Circuit Court of Appeals.

P. J. GALLAGHER,
Attorney for Plaintiff.

WM. HEALY,
Attorney for Defendant.

(Title of Court and Cause.)

ORDER.

Filed July 2, 1932.

Upon the foregoing stipulation between the attorneys for the respective parties,

IT IS ORDERED that plaintiff's Exhibit 1 be omitted from the Bill of Exceptions and that it be sent by the Clerk of the trial court direct to the United States Circuit Court of Appeals in its original form; and further, that the said Exhibit 1 be not printed in the record.

DATED July 2nd, 1932.

CHARLES C. CAVANAH,
United States District Judge for the District of Idaho, Southern Division.

(Title of Court and Cause)

ASSIGNMENTS OF ERROR.

Filed July 2, 1932.

COMES NOW the plaintiff, by P. J. Gallagher, his attorney, and says that the judgment and order of this court, made and entered on the 10th day of February, 1932, directing a non-suit in said cause, and making and entering a judgment in favor of the defendant and against the plaintiff, and that the further order of this Court made on the 21st day of March, 1932, denying the plaintiff's petition for a new trial, are erroneous and unjust to the plaintiff in the following particulars:

I.

That the Court erred in granting defendant's motion for a non-suit made at the close of the plaintiff's testimony, on the ground that plaintiff had no legal capacity to maintain the action.

II.

That the Court erred in granting defendant's motion for a non-suit made at the close of plaintiff's testimony on the ground that the demand made by plaintiff for the return of the cattle was not verified.

III.

That the Court erred in denying defendant's motion for a new trial.

WHEREFORE, plaintiff prays that said judgment be reversed and that the United States Circuit Court of Appeals for the Ninth Circuit remand said cause with instructions to grant the plaintiff a new trial.

P. J. GALLAGHER,

Attorney for Plaintiff.

(Title of Court and Cause.)

CITATION ON APPEAL.

Filed July 2, 1932.

UNITED STATES OF AMERICA,
DISTRICT OF IDAHO, SOUTHERN DIVISION.
ss.

TO BEN LAKE, AS SHERIFF OF OWYHEE COUNTY, IDAHO, GREETING:

WHEREAS, Ivan E. Oakes, as Receiver, has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of nonsuit and directed verdict rendered in the District Court of the United States for the District of Idaho, Southern Division, on the 11th day of February, 1932, and also appealed from the order of the above-entitled Court made and entered on the 21st day of March, 1932, denying the petition of the said Ivan E. Oakes for a new trial of said cause, and has given the security required by law, you are therefore hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof to show cause, if any there be, why the said judgment should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Boise, Idaho, in said District, this 2nd day of July, 1931.

CHARLES C. CAVANAH,
District Judge.

(Title of Court and Cause)

PRAECIPE FOR TRANSCRIPT OF RECORD.

Filed July 2, 1932.

TO THE CLERK OF THE ABOVE COURT:

Please prepare a certified copy of the following records and papers and incorporate them into the transcript on appeal of this case, to-wit:

1. Amended Complaint.
2. Answer to Amended Complaint.
3. Bill of Exceptions.
4. Judgment.
5. Motion for a New Trial.
6. Order Overruling Motion for New Trial.
7. Petition for Appeal.
8. Assignments of Error.
9. Order Allowing Appeal and Fixing the Amount of the Appeal Bond.
10. Bond on Appeal.
11. Citation.
12. All orders Extending Time for Filing the Printed records and Docketing the Cause in the Circuit Court of Appeals, and all orders for settling and filing Bill of Exceptions.
13. Certificate of the Clerk.

P. J. GALLAGHER;
Attorney for Plaintiff-Appellant.

(Title of Court and Cause)

CERTIFICATE OF CLERK.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 84 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit as requested by the Praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of $101.30 and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this 30th day of July, 1932.

W. D. McREYNOLDS,
Clerk.

(Seal) By DOROTHY G. WYLIE,
Deputy.

No. 6909

United States
Circuit Court of Appeals
For the Ninth Circuit

IVAN E. OAKES, as Receiver,

Appellant,

vs.

BEN LAKE, as Sheriff of Owyhee County, Idaho,

Appellee.

Upon Appeal from the District Court of the United States in and for the District of Idaho, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit: the September Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court room, in the City of Portland, in the State of Oregon, on Wednesday, the fourteenth day of September in the year of our Lord One Thousand Nine Hundred and Thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JEREMIAH NETERER, District Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED above cause argued by Mr. Geo. B. Guthrie, counsel for appellant, and by Mr. Wm. Healy, counsel for the appellee, and submitted to the Court for consideration and decision, with leave to counsel to file further briefs 10 x 10.

At a stated term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court room thereof, in the City and County of San Francisco, in the State of California, on Monday, the ninth day of January in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable FRANK H. NORCROSS, District Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that a decree be filed and recorded in the minutes of this Court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS.

Upon Appeal from the District Court of the United States for the District of Idaho, Southern Division.

Before: WILBUR and SAWTELLE, Circuit JJ., and NETERER, District J.

SAWTELLE, Circuit Judge:

Some years prior to this proceeding, W. S. Skinner and his wife executed a deed of trust mortgaging certain real and personal property situate in Malheur County, Oregon. The personal property thereunder included a band of cattle numbering 141 head and bearing a certain brand, and is the property here in controversy. Default was made by the mortgagors and the property was turned over to the trustee under the deed of trust in a foreclosure suit. At the same time, March 17, 1931, appellant was appointed received of the property by an order of the State Court of Oregon in which the foreclosure proceedings were had. The order appointing the receiver recites that he is "authorized, empowered, and directed to take immediate possession of all and singular the property, both real and personal described in or subject to the said mortgage or deed of trust." The cattle were left on the ranch of the Skinners, the defaulting mortgagors, and were run with other cattle there. It is claimed that the cattle were in the charge of an agent of the receiver on the Skinner ranch. However this may be, in June, 1931, without the knowledge or consent of the receiver, the cattle crossed over the boundary line of Oregon into Owyhee County in the State of Idaho, and about July 1, 1931, while in the latter place, the band were seized by appellee, sheriff of Owyhee County, and defend-

ant below, under an attachment suit brought in the Idaho State Court by one Summerville against W. S. Skinner. After a demand by the receiver on the sheriff for the return of the cattle, the receiver instituted this proceeding in claim and delivery in the United States District Court for the District of Idaho.

At the conclusion of the testimony on behalf of the receiver, the Court granted a motion for nonsuit. The motion was on the following grounds:

> "The defendant moves that the plaintiff be non-suited, and dismissal entered, upon the ground and for the reason that the proof shows that plaintiff has no capacity to sue in the courts of this state, inasmuch as he has neither title to the property under the Oregon law or the order of the court appointing him, nor had actual possession of the property, either in the State of Oregon or the State of Idaho, and second, on the ground that the action against the Sheriff, being an action in replevin, will not lie, in the United States Court to take property from the possession of a state court. We have a number of authorities. It was also urged by counsel for defendant in support of his motion that the demand made on the Sheriff was not in compliance with the statute, because not verified by claimant."

The correctness of the ruling on the motion for nonsuit is challenged here.

We believe that the judgment must be affirmed, on the ground, as stated in the motion for nonsuit, that the receiver had no capacity to sue in the Court below.

Since the decision of the Supreme Court in Booth vs. Clark (1854), 17 How. 322, 15 L. Ed. 164, the rule has been recognized that, in the absence of title in a receiver, either by conveyance or by statute, he will not be permitted to sue in a foreign jurisdiction, either as a matter of right or as a matter of comity. "The reason of the rule is that the legal title to the property is not in the receiver. All the rights in the property which the receiver has are by reason of the sovereign power through the courts taking custody of the property and making the receiver the representative of this sovereign power. This sovereign power does not extend beyond the confines of the state in which the receiver is appointed." Clark on Receivers, 2nd Ed., Vol. 1, § 591 (d).

In Lion Bonding Co. vs. Karatz (1923), 262 U. S. 77, 87, the Supreme Court said:

> "As Minnesota receivers merely, Hertz and Levin had no rights whatever in Nebraska. The general rule that a receiver cannot sue in a foreign jurisdiction applied. Great Western Mining Co. vs. Harris, 198 U. S. 561. The express authorization (contained in the order of appointment) to apply for aid to other courts could not aid them in this respect. Sterrett vs. Second National Bank, 248 U. S. 73."

In Sterrett vs. Second National Bank, 248 U. S. 73, 76, it was said:

> "The question presented for our consideration is whether the receiver appointed in the [Alabama] chancery court is authorized to sue in the federal court for the recovery of such property.
>
> "Since the decision of this court in Booth vs. Clark, 17 How. 322, it is the settled doctrine in federal jurisprudence that a chancery receiver has no authority to sue in the courts of a foreign jurisdiction to recover demands or property therein situated. The functions and authority of such receiver are confined to the jurisdiction in which he was appointed. The reasons for this rule were fully discussed in Booth vs. Clark, and have been reiterated in later decisions of this court. Hale vs. Allinson, 188 U. S. 56; Great Western Mining Co. vs. Harris, 198 U. S. 561, 575, 577; Keatley vs. Furey, 226 U. S. 399, 403. This practice has become general in the courts of the United States, and is a system well understood and followed. It permits an application for an ancillary receivership in a foreign jurisdiction where the local assets may be recovered and, if necessary, administered. The system established in Booth vs. Clark has become the settled law of the federal courts, and if the powers of chancery receivers are to be enlarged in such wise as to give them authority to sue beyond

the jurisdiction of the appointing court, such extension of authority must come from legislation and not from judicial action. Great Western Mining Co. vs. Harris, supra, p. 577."

It is not contended that the receiver has title to the property either by virtue of his appointment or by force of local statute, but simply that he was thereby vested with "authority and dominion over the property." Granting the soundness of the contention that the receiver was entitled to the undisturbed possession of the property and assuming that he actually had such possession, and granting or assuming that he had the power to sue locally in replevin for an unlawful interference with his right of possession, nevertheless such right of possession did not vest him with the title necessary to sue in the Court below without an ancillary appointment therein; and he was not entitled to bring the suit as a matter of comity. Great Western Mining Co. vs. Harris, 198 U. S. 561, 576.

Appellant contends that certain decisions of this Court, notably The Willamette Valley, 66 F. 565, and Lewis vs. Clark, 129 F. 570, uphold the right of a receiver of a State Court to sue in a foreign jurisdiction. We think those decisions are in harmony with the decisions of the Supreme Court, and that they do not hold that a receiver may sue in the courts of a foreign jurisdiction in cases like the one before us. Undoubtedly, there are cases that support appellant's position, but they are in conflict with the rule as enunciated by the Supreme Court;

and it is needless to say we must follow the decisions of that Court.

In view of what has been said, it becomes unnecessary to discuss the other assignments of error.

The judgment is affirmed.

[Endorsed]: Opinion. Filed January 9, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6909

IVAN E. OAKES, as Receiver, etc.,

Appellant,

vs.

BEN LAKE, as Sheriff of Owyhee County, Idaho,

Appellee.

DECREE.

APPEAL from the District Court of the United States for the District of Idaho, Southern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Idaho, Southern Division, and was duly submitted:

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged, and decreed by this Court,

that the decree of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for his costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered January 9, 1933. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

Comes now Ivan E. Oakes, as receiver, appellant herein, by Geo. B. Guthrie, of his attorneys, and moves the Court for an order staying the issuance of the mandate in the above entitled cause to and until the 9th day of April, 1933, and if within such time appellant shall file with the clerk of the Supreme Court of the United States his petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, then such mandate shall be withheld and its issuance stayed until determination by the Supreme Court of the United States of such petition for a writ of certiorari.

The foregoing motion is made by appellant by reason of the fact that said appellant has applied to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit requesting the preparation of the record herein for the purpose of

filing in the Supreme Court of the United States a petition for a writ of certiorari herein, and to review the judgment herein.

GEO. B. GUTHRIE,
Attorney for Appellant,
Ivan E. Oakes, as Receiver.

United States of America,
District of Oregon.—ss.

I, Geo. B. Guthrie, of attorneys for appellant, Ivan E. Oakes, do hereby certify that I have on this 27th day of January, 1933, deposited in the United States Postoffice at Portland, Oregon, a true copy of the foregoing motion addressed to William Healy, Esq., Boise, Idaho, of attorneys for appellee, with postage fully prepaid.

GEO. B. GUTHRIE.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. George B. Guthrie, counsel for the appellant, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including March 1, 1933; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is

to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR,
United States Circuit Judge.

Dated, San Francisco, California,
January 30, 1933.

[Endorsed]: Filed. Jan. 30, 1933. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-seven (97) pages, numbered from and including 1 to and including 97, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office,

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2nd day of February, A. D. 1933.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 10, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3384)